

of Rights to Inventions, in all solicitations that include the clause at 1852.227-70, New Technology.

(e) *Designation of New Technology Representative and Patent Representative.* The contracting officer shall insert the clause at 1852.227-72, Designation of New Technology Representative and Patent Representative, in all solicitations and contracts containing either of the clauses prescribed in paragraph (a) or (b) of this section. It may also be inserted, upon consultation with the installation's Patent Counsel, in solicitations and contracts using another patent rights clause in accordance with paragraph (c) of this section.

(f) *Solicitation provision.* The contracting officer shall insert the provision at 1852.227-84, Patent Rights Clauses, in solicitations for experimental, developmental, or research work to be performed in the United States, its possessions, or Puerto Rico when the eventual awardee may be a small business or a nonprofit organization.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39372, Sept. 26, 1989; 55 FR 27089, June 29, 1990; 60 FR 40514, Aug. 9, 1995]

## **1827.374 Procedures.**

### **1827.374-1 General.**

(a) *Contractor appeals of exceptions.* In any contract with other than a small business firm or nonprofit organization, the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, shall apply. In any contract with a small business firm or nonprofit organization, FAR 27.304-1(a) shall apply.

(b) *Greater rights determinations.* In any contract with other than a small business firm or a nonprofit organization and with respect to which advance waiver of rights has not been granted (see 1827.372(b)), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request waiver of title to an individual identified subject invention pursuant to the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1. In any contract with a small business firm or a nonprofit organization, FAR 27.304-1(a) shall apply.

(c) *Retention of rights by inventor.* The NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1, apply for any

invention made in the performance of work under any contract with other than a small business firm or a nonprofit organization. For inventions made under a contract with a small business firm or a nonprofit organization, FAR 27.304-1(b) shall apply.

(d) *Government assignment to contractor of rights in Government employees' inventions.* FAR 27.304-1(c) shall apply.

(e) *Additional requirements.* See 1827.373(a).

(f) *Revocation or modification of contractor's minimum rights.* Revocation or modification of the contractor's license rights (see 1827.372(i)(2)) shall be in accordance with 37 CFR 404.10, for subject inventions made and reported under any contract with other than a small business firm or a nonprofit organization, and in accordance with FAR 27.304-1(f) for subject inventions made and reported under any contract with a small business firm or a nonprofit organization. The contractor's right to appeal a determination to revoke or modify any such license shall be in accordance with 37 CFR part 404, Licensing of Government Owned Inventions.

(g) *Exercise of march-in rights.* (1) With respect to inventions made in the performance of work under any contract with other than a small business firm or a nonprofit organization, the procedures for the exercise of march-in rights shall be as set forth in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

(2) With respect to inventions made under any contract with a small business firm or a nonprofit organization, FAR 27.304-1(g) shall apply.

(h) *Licenses and assignments under contracts with nonprofit organizations.* FAR 27.304-1(h) shall apply. NASA's approving official for any assignment requested under FAR 27.304-1(h) is the Associate General Counsel (Intellectual Property). Contractors' requests should be made to the Patent Representative designated in accordance with 1827.373(e) and forwarded, with recommendation, to the Associate General Counsel (Intellectual Property) for decision.

[54 FR 28272, July 5, 1989, as amended at 54 FR 39373, Sept. 26, 1989; 60 FR 40514, 40515, Aug. 9, 1995]

**1827.374-2 Contracts placed by or for other Government agencies.**

FAR 27.304-2 shall apply. (See also 1827.373(c)(2).)

[54 FR 39373, Sept. 26, 1989]

**1827.374-3 Contracts for construction work or architect-engineer services.**

(a) If a contract for construction work or architect-engineer services with other than a small business firm or a nonprofit organization has as a purpose the performance of experimental, developmental, or research work, or test and evaluation studies involving such work, and the contract calls for or can be expected to involve the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), the contract shall include the clause prescribed at 1827.373(b) except as provided in FAR 27.304-3(b).

(b) For all other contracts for construction work or architect-engineer services, FAR 27.304-3 shall apply.

[54 FR 28272, July 5, 1989, as amended at 60 FR 40515, Aug. 9, 1995]

**1827.374-4 Subcontracts.**

(a) The policies and procedures in this subpart apply to all contracts at any tier. Hence, unless the contracting officer otherwise authorizes or directs, contractors awarding subcontracts and subcontractors awarding lower-tier subcontracts shall select and include one of the following clauses, suitably modified to identify the parties, in the indicated subcontracts:

(1) The clause at 1852.227-70, New Technology, in any subcontract with other than a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of experimental, developmental, research, design, or engineering work of any of the types described in 1827.373(b)(1) through (6).

(2) The clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), modified in accordance with 1827.373(a), in any subcontract with a small business firm or a nonprofit organization if a purpose of the subcontract is the performance of

experimental, developmental, or research work.

(b) Whenever a prime contractor or a subcontractor considers it inappropriate to include one of the clauses discussed in paragraph (a) of this section, in a particular subcontract, or a subcontractor refuses to accept the clause, the matter shall be resolved by the contracting officer in consultation with the installation's Patent Counsel.

(c) Contractors and subcontractors may not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from such subcontracts.

**1827.374-5 Appeals.**

FAR 27.304-5 shall apply unless otherwise provided in the NASA Patent Waiver Regulations, 14 CFR part 1245, subpart 1.

**1827.375 Administration of the patent rights and new technology clauses.****1827.375-1 New technology and patent rights follow-up.**

(a) It is important that the Government and the contractor know, protect, and exercise their rights in inventions, discoveries, improvements, and innovations made in the performance of work under NASA contracts in order to ensure their expeditious availability to the public; foster commercial use; enable the Government, contractor, and public to avoid unnecessary payment of royalties; and defend themselves against claims and suits for infringement. To attain these ends, contracts having the clause at 1852.227-70, New Technology, the clause at FAR 52.227-11, Patent Rights—Retention by the Contractor (Short Form), or any other patent rights clause (hereinafter all collectively referred to as "the clause" unless otherwise indicated), should be so administered that—

(1) Reportable items and subject inventions are identified, disclosed, and reported as required by the clause, and requests for waiver of title or election of title, when appropriate, are timely made;

(2) The rights of the Government in reportable items and subject inventions are established;